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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,419	12/15/2003	Johannis Gillissen	01901- P0005A	3982
24126	7590	06/30/2004	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC			BUECHNER, PATRICK M	
986 BEDFORD STREET			ART UNIT	
STAMFORD, CT 06905-5619			PAPER NUMBER	

3754

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,419

Applicant(s)

GILLISSEN ET AL.

Examiner

Patrick M Buechner

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/15/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in EPO on 6/15/2001. It is noted, however, that applicant has not filed a certified copy of the 01202277.8 application as required by 35 U.S.C. 119(b), see also MPEP 1895.01 II.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuchs (US 4,946,069).

Fuchs '069 discloses a media dispenser that can be used to dispense a pharmaceutical (intended use in preamble) and having a main body (2) with two extending grips (14a, Figure 4) having a concave top surface with an inherent radius of curvature greater than 3mm (arc of 90 degrees large enough for a human finger). Fuchs '069 also discloses an actuator (pump 5) movable relative to the body, the actuator having an actuation surface sufficiently wide to support a human thumb (column 5, lines 28-44) and with a hollow recess (22). Fuchs '069 also discloses co-operating guiding features (23 and 36).

4. Claims 1, 2, 6, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuchs (WO 00/47332).

Fuchs '332 discloses a media dispenser to dispense a pharmaceutical (page 1, lines 1-2) and having a main body (45) with two extending grips (44) having a concave top surface. Fuchs '332 also discloses an actuator (61) movable relative to the body, the actuator having an actuation surface (56) sufficiently wide to support two human thumbs (inherent, see Figure 9). Fuchs '332 also discloses co-operating guiding features (59 and 60). In Figure 14 Fuchs '332 discloses the limitations of claim 9, including the body and actuator being oblong and symmetrical.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuchs '332.

Fuchs '332 discloses the claimed invention in Figures 1-14 (as discussed above in 4) with the exception of the grip surfaces being concave. Fuchs '332 discloses the grip surfaces as concave (as discussed above in 4) in Figures 9-10. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the surfaces of

figures 12-14 with the concavity taught by figures 9-10 in order to help keep the fingers from slipping off of the surfaces.

In figures 12-14, the center of gravity is inherently located in the lower half of the dispenser.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuchs '069.

Fuchs '069 discloses all the limitations of claim 7 with the exception of the actuation force being 50 N.

Examiner takes Official notice that the actuation force is a results effective variable (result: actuation, effect: too low a force, no actuation), and it would have been obvious for one of ordinary skill in the art at the time the invention was made to set the actuation force at 50 N, as the dispenser of Fuchs '069 is to be actuated by hand, and a 50 N force is a force that is easily applied by a person using the device of Fuchs '069 as intended.

Conclusion


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (703) 308-2602. The examiner can normally be reached on 7:00am-4:30pm M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PS

PB


Gene Mancene
Supervisory Patent Examiner
Group 3700